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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAURA BALLEGEER,

Plaintiff,

vs.

MOTION REPOSSESSORS, INC.,  
WELLS FARGO BANK, N.A., and  
DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:15-cv-07707-JAK-GJS

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION  
TO MOTION TO DISMISS OF  
DEFENDANT WELLS FARGO  
BANK, N.A.**

Date: March 21, 2015  
Time: 8:30 a.m.  
Courtroom; 750

Hon. John A. Kronstadt

## I. INTRODUCTION

This is an action for violations of the Fair Debt Collection Practices Act, California's Rosenthal Fair Debt Collection Practices Act, and conversion, brought by plaintiff Laura Ballegeer, against an auto lender, defendant Wells Fargo Bank, N.A., and its repossession agency, Motion Repossessors, Inc.

Plaintiff's father bought a vehicle on credit, financed by Wells Fargo. Plaintiff's father died, and plaintiff was his heir. Upon the death of plaintiff's father, defendant Wells Fargo promised her it would not repossess the vehicle, pending probate administration. This was a lie, for Wells Fargo secretly ordered the repossession anyway. Wells Fargo's agent defendant Motion Repossessors then broke into plaintiff's secured property and stole the vehicle by committing a breach of the peace. While at Motion Repossessors to recover her items in the vehicle, plaintiff refused to sign an illegal release of all her legal claims. Motion Repossessors then had its security guard toss plaintiff and her personal possessions out into the street, telling her she was trespassing and would be arrested. Wells Fargo then lied to plaintiff again, and told her she did not have a legal right to reinstate the contract, when in fact she did. Plaintiff had to hire an attorney, rent a car for months, and incur other expenses until she finally got her car back from Wells Fargo.

Wells Fargo's motion to dismiss attacks plaintiff's standing under the Rosenthal Act, but oddly, fails to cite to the standing provisions of the Act. Nor is the motion supported by a single citation to case law. Had Wells Fargo read the relevant standing provisions, it would have discovered that the Rosenthal Act expressly grants standing to "any person" subjected to the wrongful conduct, not just the "debtor." Moreover, the definition of "debtor" in the Rosenthal Act includes anyone who is *alleged* to have property due or owing to the creditor, and plaintiff clearly falls under that definition. This is not an issue of first impression in the Ninth Circuit, and the law is settled in plaintiff's favor.

1 Wells Fargo also makes the unsupported assertion that plaintiff had no right  
2 or interest in the vehicle, under her conversion claim, supposedly because the  
3 probate administration was not yet completed at the time of the wrongful conduct.  
4 In fact, the Probate Code expressly states that title passes to an heir immediately  
5 upon the decedent's death. Thus, plaintiff had not only a right to possession, but  
6 actual legal title to the vehicle, subject to probate administration. Defendant's  
7 motion to dismiss should be denied.

## 8 II. SUMMARY OF FACTS AND CLAIMS

9 On December 14, 2014, plaintiff's father Ronald Ballegeer purchased a  
10 2011 Chevrolet Traverse, at a car dealership. He bought the vehicle on credit, and  
11 Wells Fargo Bank, N.A. financed the transaction by taking assignment of the retail  
12 installment sales contract. Complaint, ¶ 1. Unfortunately, Ronald Ballegeer passed  
13 away intestate in early 2015, and by operation of law, his daughter Laura Ballegeer  
14 and her brother became his legal heirs. Complaint, ¶ 1. Plaintiff Laura Ballegeer  
15 has now completed the probate process, and the probate court has issued an order  
16 confirming her as the legal heir to Ronald Ballegeer, along with her brother. See  
17 Request for Judicial Notice.

18 Plaintiff was handling her father's affairs, and contacted Wells Fargo to  
19 inform it of the death of her father. The account was current, and plaintiff told  
20 Wells Fargo that she intended to pay off the loan entirely as her father's heir, and  
21 take formal title to the vehicle, as soon as the probate was completed. Complaint, ¶  
22 1. Wells Fargo's representative promised plaintiff it would not repossess the  
23 vehicle while plaintiff was going through the probate process. Complaint, ¶ 1.  
24 However, without informing plaintiff of its intentions, Wells Fargo shortly  
25 thereafter hired defendant Motion Repossessors to repossess plaintiff's vehicle.

26 Defendant Motion Repossessors repossessed plaintiff's vehicle by breaking  
27 into plaintiff's secured and gated residential apartment complex, without  
28 permission. Complaint, ¶ 2. Accordingly, Motion Repossessors breached the peace

1 in violation of Commercial Code § 9609 and the Collateral Recovery Act, Bus. &  
2 Prof. Code § 7508.2(d).

3 Defendant Motion Repossessors also seized plaintiff's personal possessions  
4 inside the vehicle. Under the Collateral Recovery Act, it had a duty to return those  
5 items to plaintiff. Plaintiff went to Motion Repossessors to get her personal  
6 possessions. Before being permitted to inspect and verify her personal possessions,  
7 Motion Repossessors demanded that plaintiff sign a general release of all legal  
8 claims she had against Motion Repossessors and the lienholder, Wells Fargo.  
9 Complaint, ¶ 3. Plaintiff refused, but ultimately was forced to sign when defendants  
10 continued to refuse her access to her possessions. The Rosenthal Fair Debt  
11 Collection Practices Act prohibits such unconscionable legal waivers as a violation  
12 of the Act. Civil Code § 1788.33; Civil Code § 1788.17.

13 Angered by plaintiff's reluctance to sign its illegal release, Motion  
14 Repossessors had its security guard take plaintiff to the gate, who then dumped  
15 plaintiff's possessions in the street, and forced plaintiff to go through them there to  
16 humiliate her, stating that she was trespassing and would be arrested. Complaint, ¶  
17 4.

18 Wells Fargo continued making false statements to plaintiff after the  
19 repossession. Plaintiff called Wells Fargo and requested to reinstate her contract, as  
20 was her right under the Rees-Levering Act, Civil Code § 2983.2(a). Wells Fargo's  
21 representative falsely told plaintiff that she could not reinstate the contract.  
22 Complaint, ¶ 5. Meanwhile, Wells Fargo sent plaintiff a formal written notice  
23 which did grant plaintiff the right to reinstate, which it apparently hoped plaintiff  
24 would not read. Complaint, ¶ 5.

25 Plaintiff hired a probate attorney, and ultimately obtained the proper letters  
26 of administration appointing her as personal representative of her father's estate.  
27 See Request for Judicial Notice. She paid off the Wells Fargo loan and obtained  
28 title to the car. Plaintiff then brought this action to recover for the wrongful

1 repossession, having incurred months of rental car charges, repossession fees, and  
2 attorneys fees as a result of Wells Fargo's repossession and misrepresentations.

3 As to defendant Wells Fargo, plaintiff asserts the following legal claims in  
4 the complaint.

5 • Claim 1. Wells Fargo's false promise not to repossess the vehicle was a  
6 violation of Civil Code § 1788.17 (incorporating by reference 15 U.S.C. § 1692e)  
7 which prohibits "any false, deceptive, or misleading representation or means in  
8 connection with the collection of any debt." Complaint, ¶¶ 1, 28.

9 • Claim 2. Wells Fargo's false oral statement that plaintiff had no right to  
10 reinstate the contract after repossession, while it was disingenuously granting that  
11 right in writing, also violated Civil Code § 1788.17 (incorporating by reference 15  
12 U.S.C. § 1692e), as a deceptive statement. Complaint, ¶¶ 5, 28.

13 • Claim 3. Wells Fargo is vicariously liable for the abuse of its agent Motion  
14 Repossessors, who manhandled plaintiff out of the office, and threw her  
15 possessions on the street to humiliate her. This violated Civil Code § 1788.17  
16 (incorporating by reference 15 U.S.C. § 1692d), which provides "A debt collector  
17 may not engage in any conduct the natural consequence of which is to harass,  
18 oppress, or abuse any person in connection with the collection of a debt."  
19 Complaint, ¶¶ 4, 27.

20 • Claim 4. Wells Fargo is vicariously liable for the false statements of its  
21 agent Motion Repossessors, who told that plaintiff she was trespassing, and made  
22 the false threat that plaintiff would be arrested. These statements violated Civil  
23 Code § 1788.17 (incorporating by reference 15 U.S.C. § 1692e) which prohibits  
24 "any false, deceptive, or misleading representation or means in connection with the  
25 collection of any debt." They also violated Civil Code § 1788.17 (incorporating by  
26 reference 15 U.S.C. § 1692d) because they were abusive. Complaint, ¶¶ 4, 25, 28.

27 • Claim 5. Wells Fargo is vicariously liable for the unconscionable conduct  
28 of its agent Motion Repossessors, who forced plaintiff to sign an illegal release of

her rights against both Wells Fargo and Motion Repossessors, in violation of Civil Code § 1788.33. That section provides “Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.” This conduct also violated Civil Code § 1788.17 (incorporating by reference 15 U.S.C. § 1692f), which states: “A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” Complaint, ¶¶ 3, 26, 29.

### III. ARGUMENT

#### A. The Rosenthal Act Grants Standing To “Any Person,” Not Just The “Debtor”

In a motion to dismiss for alleged lack of standing, defendant Wells Fargo has failed to even discuss the Rosenthal Act’s standing provisions, or cite to a single case in support of its argument. The California Legislature expressly expanded standing under the Act to include “any person” subjected to the prohibited practices, in the extensive 1999 amendments. The Legislature accomplished this by passing Civil Code § 1788.17, which provides: “Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, **and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code.**” Civil Code § 1788.17 (emphasis added). In turn, 15 U.S.C. § 1692k provides that “Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter **with respect to any person** is liable to **such person** . . .” 15 U.S.C. § 1692k.

By using the phrase “Notwithstanding any other provision of this title” in Civil Code § 1788.17, the Legislature’s 1999 amendments effectively abrogated Civil Code § 1788.30(a), the old provision under which only the debtor had standing to sue. Gonzales v. Arrow Fin. Services, LLC, 660 F.3d 1055, 1065 (9<sup>th</sup> Cir. 2011)(“By use of the phrase ‘notwithstanding any other provision,’ the 1999 amendment unambiguously supercedes any provision of the Rosenthal Act

1 inconsistent with the referenced provisions of the FDCPA”). Thus, after the 1999  
2 amendments, by operation of Civil Code § 1788.17, “any person” subject to an  
3 illegal practice may sue, pursuant to 15 U.S.C. § 1692k.

4 The various prohibitions of the FDCPA are incorporated into the Rosenthal  
5 Act by Civil Code § 1788.17, and they are not limited only to “debtors.” 15 U.S.C.  
6 § 1692e generally prohibits “**any** false, deceptive, or misleading representation or  
7 means in connection with the collection of any debt,” regardless to whom the  
8 misrepresentation is made. 15 U.S.C. § 1692d provides that “A debt collector may  
9 not engage in any conduct the natural consequence of which is to harass, oppress,  
10 or abuse **any person** in connection with the collection of a debt.” (emphasis added).  
11 15 U.S.C. § 1692f states, without limiting to whom the conduct must be directed:  
12 “A debt collector may not use unfair or unconscionable means to collect or attempt  
13 to collect any debt.”

14 Consistent with the plain text of the FDCPA, and the Ninth Circuit’s  
15 Gonzales decision, supra, the federal courts have consistently found that non-  
16 debtors have standing to sue under the Rosenthal Act, by operation of Civil Code §  
17 1788.17. Crockett v. Rash Curtis & Associates, 929 F. Supp.2d 1030, 1032-1033  
18 (N.D. Cal. 2013)(non-debtor harassed by telephone calls had standing under  
19 FDCPA and Rosenthal); Shannon v. Windsor Equity Group, \_\_\_ F.3d \_\_\_ (S.D.  
20 Cal. 2014)(“[I]f an individual has standing to assert a claim under Sections 1692b  
21 to 1692j under the FDCPA, that individual must also having standing to assert a  
22 claim under the Rosenthal Act”); Heathman v. Portfolio Recovery Associates, \_\_\_  
23 F.3d \_\_\_ (S.D. Cal. 2013)(“the most egregious misconduct targeted by the FDCPA  
24 – [is] suing non-debtors over nonexistent debts”); Rawlinson v. Law Office of  
25 William M. Rudow, LLC, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. 2011, unpublished) (holding that  
26 consumer in alleged possession of vehicle, though not the debtor, could sue for  
27 FDCPA violations because “any aggrieved party, not just a debtor, may bring an  
28 action under the statute”).



1 It should also be noted that plaintiff is not suing Wells Fargo under any of  
2 the Rosenthal Act's provisions which limit their applicability to the "debtor."<sup>1</sup> As  
3 explained under the Summary of Facts and Claims section above, plaintiff's claims  
4 against Wells Fargo are all under Civil Code § 1788.17. Nothing in Civil Code §  
5 1788.17 requires the *victim* to be the same person as the *debtor*. That section  
6 provides "Notwithstanding any other provision of this title, every debt collector  
7 collecting or attempting to collect **a consumer debt** shall comply with the  
8 provisions of Sections 1692b to 1692j of [the FDCPA]." A "consumer debt" is  
9 defined as money or property due or owing, or allegedly due or owing, by *any*  
10 "natural person" to another person. Civil Code § 1788.2(e) and (f). Thus, the  
11 definition of "consumer debt" does not require that the person owing the debt be  
12 the same person who is subject to the unlawful practice. As long as the debt  
13 collector is collecting on the debt *of any natural person*, and that debt was for  
14 goods on credit and bought for personal or family purposes, the Act applies.

15 In summary, the FDCPA affords standing to any person subject to the illegal  
16 conduct (15 U.S.C. § 1692k), and the Rosenthal Act incorporates these standing  
17 provisions of the FDCPA as state law, after the 1999 amendments. Civil Code §  
18 1788.17. Because the Rosenthal Act applies to protect both debtors and non-  
19 debtors, the technical issue of whether plaintiff was a "debtor" under probate law or  
20 under the definitions in the Rosenthal Act, is simply irrelevant to standing. As a  
21 consumer protection law, the Act must be interpreted liberally to accomplish its  
22 purposes. See Donohue v. Quick Collect, Inc., 592 F.3d 1027, 1033-34 (9th Cir.  
23 2010); Pitney Bowes, Inc. v. State of California, 108 Cal.App.3d 307, 324 (1980).

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24  
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26  
27 <sup>1</sup> Certain prohibitions in the Rosenthal Act apply only to conduct directed  
28 toward the debtor. See e.g. Civil Code §§ 1788.10(d), 1788.11(e),  
1788.12(d), 1788.13(a), 1788.14(a). However, plaintiff is not suing under  
any of these provisions. The other prohibitions in the Act are either  
expressly applicable to "any person," or apply to prohibit the conduct  
generally, without specifying the victim. See e.g. Civil Code § 1788.10(a),



1 B. In Any Event, Plaintiff Is A “Debtor” Under The Rosenthal Act’s Broad  
 2 Definition Of That Term

3 The Rosenthal Act defines a debtor as "a natural person from whom a debt  
 4 collector seeks to collect a consumer debt which is due and owing or *alleged* to be  
 5 due and owing from such person." Cal. Civ. Code § 1788.2(h). (The term “debt”  
 6 means “money, *property* or their equivalent, due or owing or *alleged* to be due or  
 7 owing from a natural person by reason of a consumer credit transaction.”).

8 Plaintiff falls under this definition of “debtor,” despite not having signed the  
 9 loan papers. Wells Fargo *alleged* that plaintiff had “property” due and owing to  
 10 Wells Fargo by reason of a consumer credit transaction, i.e. the vehicle itself. The  
 11 inclusion of the words “alleged to be due and owing” expands the law to cover  
 12 consumers who are not legally responsible for the debt, but are subject to the illegal  
 13 practice. Dunham v. Portfolio Recovery Associates, LLC, 663 F. 3d 997 (8<sup>th</sup> Cir.  
 14 2011)(finding under FDCPA that the phrase “any natural person obligated or  
 15 *allegedly* obligated to pay any debt” includes non-debtors who were subject to the  
 16 wrongful conduct); Rawlinson v. Law Office of William M. Rudow, LLC, \_\_\_\_  
 17 F.3d \_\_\_\_ (4<sup>th</sup> Cir. 2011,unpublished) (holding that consumer in possession of  
 18 vehicle, though not the debtor, could sue for FDCPA violations because “any  
 19 aggrieved party, not just a debtor, may bring an action under the statute”).

20 C. Plaintiff Acquired Title To The Vehicle Immediately Upon Her Father’s  
 21 Death, Under Probate Law

22 Wells Fargo assumes, without any authority, that plaintiff had “no interest”  
 23 in the vehicle, until the probate administration was completed. In fact plaintiff was  
 24 a legal owner immediately upon her father’s death, by operation of law. Probate  
 25 Code § 7000 provides that “Subject to Section 7001, title to a decedent's property  
 26 passes on the decedent's death to the person to whom it is devised in the decedent's  
 27 last will or, in the absence of such a devise, to the decedent's heirs as prescribed in

28 \_\_\_\_\_  
 1788.10(c), 1788.10(e), 1788.11(a)-(d), 1788.12(b) and (c), 1788.13(b),

1 the laws governing intestate succession. This means that plaintiff acquired title  
 2 immediately upon the death of her father, subject only to confirmation in the  
 3 probate proceeding. Olson v. Toy, 46 Cal.App.4<sup>th</sup> 818, 825 (1996)(“ . . . [A]n estate  
 4 does not take title to the decedent's property. When a person dies, title to his or her  
 5 property vests in the heirs or devisees, subject to administration”); Mac v. Bank of  
 6 America, 76 Cal.App.4<sup>th</sup> 562, 566 (1999) (immediately upon death of decedent, the  
 7 heir became the legal “account holder” of the deceased’s bank account at Wells  
 8 Fargo, and therefore bank’s mailing of monthly statements to decedent could not  
 9 trigger statute of limitations on forged checks).

10 D. Plaintiff Has Properly Pleaded Ownership Or Right To Possession Under Her  
 11 Conversion Claim

12 The elements of conversion are: (1) the plaintiff's ownership or right to  
 13 possession of the property; (2) the defendant's conversion by a wrongful act or  
 14 disposition of property rights; and (3) damages. Burlesci v. Petersen, 68 Cal.  
 15 App.4<sup>th</sup> 1062, 1065 (1998). Wells Fargo challenges only the first element on this  
 16 motion.

17 As explained in the preceding section, plaintiff held legal title to the vehicle  
 18 at the time of the repossession, and therefore has satisfied the element of  
 19 “ownership.” Alternatively, plaintiff certainly had a *right* to possession of the  
 20 property which she had just inherited. Who else would have the right to  
 21 possession, if not the heirs? By promising plaintiff not to repossess the vehicle,  
 22 Wells Fargo itself acknowledged plaintiff’s right of possession of the property.  
 23 Complaint, ¶ 1. A bank commits conversion when by its dealings, negligence, or  
 24 statements, it leads the customer to believe it will not repossess a vehicle, but then  
 25 does so. Varela v. Wells Fargo Bank, 15 Cal.App.3d 741, 747, 749 (1971)(“The  
 26 repossession must have struck her out of a clear sky”).  
 27  
 28

